

EDMUND G. BROWN JR., Attorney General
of the State of California
JOSE R. GUERRERO, State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-384

ROXANNE RENEE FORTNER
11212 Presada Ct.
Bakersfield CA 93311

STATEMENT OF ISSUES

Applicant/Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about November 13, 2006, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a respiratory care practitioner license from Roxanne Renee Fortner (Applicant/Respondent). On or about November 1, 2006, Roxanne Renee Fortner certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 2, 2007.

///

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction."

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500)."

7. Section 3750.5 of the Code states:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

"(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with

1 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
2 (commencing with section 4015) of Chapter 9.”

3 “(b) Used any controlled substance as defined in Division 10 (commencing with
4 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
5 (commencing with section 4015) of Chapter 9.”

6 “(d) Been convicted of a criminal offense involving the consumption or
7 self-administration of any of the substances described in subdivisions (a) and (b), or the
8 possession of, or falsification of a record pertaining to, the substances described in subdivision
9 (a), in which event the record of the conviction is conclusive evidence thereof.”

10 “(e) Been committed or confined by a court of competent jurisdiction for
11 intemperate use of or addiction to the use of any of the substances described in subdivisions (a),
12 (b), and (c) in which event the court order of commitment or confinement is prima facie evidence
13 of that commitment or confinement.”

14 8. Section 3752 of the Code states:

15 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
16 made to a charge of any offense which substantially relates to the qualifications,
17 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
18 the meaning of this article. The board shall order the license suspended or revoked, or
19 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
20 conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section
22 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
23 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
24 accusation, information, or indictment.”

25 9. Section 3752.5 of the Code states:

26 “For purposes of Division 1.5 (commencing with Section 475), and this chapter
27 [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily
28 injury shall be considered a crime substantially related to the qualifications, functions, or

1 duties of a respiratory care practitioner.”

2 10. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of
5 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
6 perform the functions authorized by his or her license or in a manner inconsistent with the
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
10 abetting the violation of or conspiring to violate any provision or term of the Act.”

11 11. Section 492 of the Code states:

12 “Notwithstanding any other provision of law, successful completion of any diversion
13 program under the Penal Code, or successful completion of an alcohol and drug problem
14 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
15 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
16 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
17 that division, from taking disciplinary action against a licensee or from denying a license for
18 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
19 record pertaining to an arrest.

20 This section shall not be construed to apply to any drug diversion program operated by
21 any agency established under Division 2 (commencing with Section 500) of this code, or any
22 initiative act referred to in that division.”

23 COST RECOVERY

24 12. Section 3753.5, subdivision (a) of the Code states:

25 "In any order issued in resolution of a disciplinary proceeding before the board,
26 the board or the administrative law judge may direct any practitioner or applicant found to have
27 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
28 investigation and prosecution of the case."

1 displaying signs of being under the influence of a controlled substance.

2 C. Senior Deputy Smith conducted a narcotics evaluation of respondent, and
3 he concluded that respondent was under the influence of a central nervous system stimulant.

4 D. During the search, Officer R. Grady saw a black purse and asked for the
5 owner. Respondent identified the purse as hers, and she gave Officer Grady permission to search
6 it. Before opening it, he asked if she had any illegal items in the purse, and she answered, "Yes."
7 Officer Grady opened the purse and found two bindles of methamphetamine, a Schedule II
8 controlled substance, weighing approximately .90 grams.

9 E. Officer Geronimo advised respondent of her rights per the Miranda
10 decision, which she said she understood and waived. Respondent told the officer that the
11 methamphetamine in her purse belonged to her and was for her personal use, and she was not
12 selling it. She said that she was not aware that anyone at the residence used or sold
13 methamphetamine and that she was at the residence to visit a friend, B.F. Respondent admitted
14 that she uses methamphetamine "every day," and that she had last used it in the morning of the
15 day of the arrest. Respondent was arrested for violating Health and Safety Code section
16 11377(a), possession of a controlled substance, and Health and Safety Code section 11550(a),
17 under the influence of a controlled substance.

18 17. On or about February 3, 2004, a criminal complaint titled *People of the*
19 *State of California vs. Roxanne Renee Fortner*, case no. BF105198, was filed in Superior Court,
20 Kern County, Bakersfield Judicial District. Count 1 charged respondent with violating Health
21 and Safety Code section 11377(a), possession of a controlled substance, a felony. Count 2
22 charged respondent with violating Health and Safety Code section 11550(a), under the influence
23 of a controlled substance, a misdemeanor.

24 18. On February 3, 2004, respondent entered a plea of not guilty to all counts.
25 On February 18, 2004, respondent changed her plea and entered a plea of nolo contendere to
26 Count 1, violation of Health and Safety Code section 11377(a), possession of a controlled
27 substance, a felony. The Court found her guilty of Count 1, and dismissed Count 2 in furtherance
28 of justice. The Court found respondent eligible for treatment pursuant to Penal Code section

1 1210.1(A), and she was placed on three years probation. Among other probationary conditions,
2 she was ordered to successfully complete a drug treatment program or any other appropriate
3 program as approved by the probation officer. She was ordered to register as a narcotics offender
4 as required pursuant to Health and Safety code section 11590. She received a total of nine days
5 credit. She was ordered to pay various fees.

6 19. On March 24, 2005, respondent submitted proof of successful completion
7 of a drug treatment program, and the terms and conditions of probation pursuant to Penal Code
8 section 1210.1. The Court ordered probation terminated. Count 1 was reduced to a
9 misdemeanor pursuant to Penal Code section 17. The conviction or plea of nolo contendere was
10 set aside; a plea of not guilty was ordered entered, and the count was dismissed pursuant to Penal
11 Code section 1210.1.

12 2001 conviction

13 20. On December 19, 2001, respondent was convicted in the State of Utah for
14 violating Code section 58-37-8(2), possession of marijuana. The circumstances are as follows:

15 A. On December 15, 2001 at approximately 5:25 p.m., in Sevier County,
16 Utah, Sheriff Bryant Johnson stopped a driver, later identified as respondent, for traveling 80
17 miles per hour in a 75 mile per hour zone. Officer Johnson smelled marijuana and asked
18 respondent if he could search the vehicle. She consented, and he found a box with two glass
19 pipes and a green leafy substance. He arrested respondent and the passenger in the vehicle.
20 Respondent provided a voluntary urine sample, which tested positive for THC, an active
21 ingredient in marijuana.

22 B. On December 19, 2001, respondent appeared in court and entered a plea of
23 guilty to violating Utah Code section 58-37-8 (2), possession of marijuana, and was convicted.
24 Respondent was fined \$300.00, to be paid in three payments of \$100.00 beginning February 1,
25 2002. On February 21, 2002, April 19, 2002 and September 16, 2002, the court issued payment
26 due letters to respondent. She never made a payment. On March 27, 2003, the case was closed
27 because respondent could not be located.

28 ///

2000 conviction

21. On January 19, 2000, respondent was convicted of violating Penal Code section 273.5(a), spousal abuse. The circumstances are as follows:

22. On January 17, 2000, at approximately 11:15 p.m., Kern County Sheriff Officer Lopez was assigned to investigate a call of disturbance of the peace at a residence. When he arrived, he saw the front window of the apartment had been broken. Respondent answered the front door and began yelling obscenities at the officer. Officer Lopez spoke with respondent, and he could smell a strong odor of alcohol on her person. Her eyes were bloodshot and her speech was slurred. She said that she had been sleeping and her son was in the back room asleep. Officer Lopez told her that he was investigating a call of a peace disturbance, and wanted to check that everyone was all right.

A. Officer Lopez entered the apartment but could not locate respondent's son, D. When he asked respondent where her son was, she became hysterical and began screaming and yelling profanities again.

B. Officer Weigand interviewed V.P., and V.P. reported that he and respondent had been living together for two years. V.P.'s son and respondent's son also lived with them, and were asleep that night. Respondent and V.P. were drinking alcohol with three other people in the apartment that night, and he and respondent argued. The children woke up, and V.P. attempted to leave the apartment with them when respondent began hitting him. Respondent punched V.P. in the right eye, and continued to hit him about the upper body. One of the women present, D.T., took the children to her house. Respondent continued physically assaulting V.P., bit him on the lower back area, and pushed him into her apartment window, breaking it.

23. On January 19, 2000, a criminal complaint titled *People of the State of California vs. Roxanne Renee Fortner*, case no. BM583145A was filed in Superior Court, Kern County. Count 1 alleged a violation of Penal Code section 273.5(a), spousal abuse. On January 19, Respondent was convicted on her plea of guilty to a violation of Penal Code section 273.5(a), spousal abuse. Imposition of sentence was suspended, and she was placed on probation for three

1 years. She was ordered to enroll immediately in a counseling program and to submit proof of
2 enrollment by February 22, 2000. She was ordered to serve two days in custody and received
3 credit for time served of two days, and she was ordered to use no force or violence upon the
4 victim, V.P.

5 24. A bench warrant was issued on April 3, 2000 because respondent failed to
6 provide proof of enrollment in a counseling program. Two bench warrants were issued on
7 December 12, 2001 and June 20, 2002 because respondent failed to provide proof of completion
8 of the counseling program. On July 11, 2002, the court found that respondent was in compliance
9 with the terms of probation and probation was reinstated. Respondent completed probation on
10 July 11, 2003.

11 25. Respondent's application is denied based on the above-described three
12 convictions, which are in violation of code sections 3750(d), 3752 [substantially related
13 conviction], 3750(g) and CCR 1399.370(a).

14 SECOND CAUSE FOR DENIAL OF APPLICATION

15 (Use and possession of controlled substance)

16 26. Paragraphs 16 through 20 are incorporated herein.

17 27. Respondent's 2004 conviction for violating Health and Safety Code
18 section 11377(a), possession of a controlled substance, and the 2001 conviction for violating
19 Utah Code section 58-37-8(2), possession of marijuana, are in violation of code sections
20 3750.5(a) [possession of a controlled substance], 3750.5(b) [use of a controlled substance],
21 3750.5(d) [conviction of a criminal offense involving controlled substances] and 3750.5(e)
22 [court-ordered treatment program].

23 THIRD CAUSE FOR DENIAL OF APPLICATION

24 (Conviction of a crime involving bodily injury)

25 28. Paragraphs 21 through 24 are incorporated herein.

26 29. Respondent's conviction in 2000 for violating Penal Code section 273.5(a)
27 [spousal abuse] is in violation of code section 3752.5 [conviction of a crime involving bodily
28 injury].

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Denying the application of Roxanne Renee Fortner for a respiratory care
5 practitioner license;

6 2. Directing Roxanne Renee Fortner to pay the Respiratory Care Board of
7 California the costs of the investigation and enforcement of this case, and if placed on probation,
8 the costs of probation monitoring;

9 3. Taking such other and further action as deemed necessary and proper.
10

11 DATED: June 26, 2007
12
13

14 Original signed by Liane Zimmerman for:
15 STEPHANIE NUNEZ
16 Executive Officer
17 Respiratory Care Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant
21
22
23
24
25
26
27
28